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SPECIAL CIVIL APPLICATION No 403 of 1998

Hon'ble MR.JUSTICE S.D.DAVE and

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

- GUJARAT NAVODAYA MANDAL

Versus

STATE OF GUJARAT

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Appearance:

MR MC BHATT for Petitioner

MR JD AJMERA for Respondent No. 3

M/s K.S.Nanavati & J.J.Bhatt Sr. counsels

for MR RS SANJANWALA for Respondent No. 4

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CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE S.D.PANDIT

Date of decision: 24/02/98

ORAL JUDGEMENT (Per: Pandit.J)

Gujarat Navodaya Mandal a registered society, registered under the Societies Registration Act as well as Bombay Public Trusts Act has filed the present petition to challenge the order passed by the respondent no.2-Chief Wildlife Warden on August 8,1997 in favour of respondent no.4- Reliance Petrochem Ltd.( hereinafter referred to as RPL for short).

2. Respondent no.4 RPL has undertaken "Moti Khavdi Refinery Project" for the production of petroleum products. Respondent no.4 RPL in order to function the said project has to import crude oil by sea fare and then to refine the same, and to produce the petroleum products in their refinery . For that purpose, they first applied on September 2,1992 for getting clearance of their project from the State Government. By its communication dated 1.10.92, the State Government agreed to to give clearance and supported the said project of the RPL. On November 19,1992, the Gujarat Pollution Control Board(CPCB) also issued necessary NOC for the purpose of setting up the project of RPL. Thereafter the respondent no.4 RPL approached the Environment Department of the Government of India on July 17, 1996 in order to get clearances under the Environment (Protection) Act 1986. Government of India gave said clearance on certain conditions on September 15,1995. Thereafter the respondent no.4 applied for the permission under section 2 of the Wildlife Protection Act 1972.(hereinafter referred to as the said Act) and Section 2(ii) of Forest (Conservation) Act 1980. After getting such clearance the respondent no.4 approached the respondent no.2 and respondent no.2 has passed the order in this regard on August 8,1997 by which he has permitted laying of pipeline in Marine National Park/Sanctuary, Jamnagar

which is challenge by the present petitioner in this petition.

3. It is the claim of the petitioner that said order is purported to have been passed under section 29 of the Wildlife Protection Act, 1972. It is the contention of the petitioner that in the permission granted and the work which the respondent no.4 RPL is to undertake in pursuance of the said order, would not fall within the purview of section 29. Consequently the respondent no.2-the Chief Wildlife Warden has no jurisdiction to pass the said order. It is further contended by the petitioner that the said order is contrary to the provisions of the said Act. It is contended by the petitioner that said order will cause damage to the forest as well as to the marine life and would also cause damage to the environment. Thus, it is claimed that respondent no.4's project will have disastrous effect on ecology and environment. Therefore, in the circumstances, the petitioner is seeking an order from this court to strike down the order dated August 8, 1997 by holding that the respondent no.2 has no power to pass such an order.

4. Respondent no.1 State of Gujarat, respondent no.2- the Chief Wildlife Warden and respondent no.3 Union of India have opposed the present petitioner's claim. According to all of them, the order in question passed by the respondent no.2 the Chief Wildlife Warden is within the parameters of the provisions of the said Act and necessary precautions have been taken by the State Government as well as the Central Government to see that there is necessary protection to the wildlife, marine life as well as to the environment. Thus, they contend that there is no illegality in passing the order in question and consequently present petition deserves to be rejected.

5. Respondent no.4 has also filed affidavit in reply as well as additional affidavit opposing the present petition. It is contended by the respondent no.4 that earlier three proceedings were taken before the Apex Court as well as this Court to cancel the project in question and all those proceedings were dismissed and in spite of this, without making any reference to those earlier proceedings, the petitioner has come forward before this Court only with a view to harass the respondent no.4. It is the claim of the respondent no.4 that in order to see that the Environment and Ecology are not damaged and preserved, the RPL has engaged the

Council of Scientific and Industrial Research (CSIR) as well as the National Institute of Oceanography (NIO) to survey the project and the area through which the pipeline was to be laid and the project to be implemented. It is the contention of the respondent no.4 that these two Organizations viz. CSIR and NIO are prime institutions for such survey and study and both of these institutions had carried out the survey and have cleared the project of RPL, It is further contended by respondent no.4 that the NIO had also taken the approval of the Indian Resources Information & Management Technologies Pvt.Ltd. , Hyderabad (IRIMT). Said IRIMT conducted a detailed study of the vegetation, morphology and ecological features of the intertidal area in question and only after their clearance NIO has recommended the special design as per the recommendations made by IRIMT. It is further contended against the claim of the petitioner that on account of the transfer of crude oil from SBM to the shore tank, because of the spillage control system adopted by respondent no.4, they would not cause any damage to the marine life. They have taken necessary precautions and they are following the methods which are being followed for the first time in India to see that there is no damage to the marine life as well as to the ecology. It is further contended by the respondent no.4 that by implementing the project in question, there will be the saving of 300 million dollars per year of foreign exchange. Thus it is in the National interest to have the project in question. Said project is also in the interest of State of Gujarat and therefore, in the circumstances also the claim of the petitioner that the respondent no.4 should not be permitted to act on the said permission to start the work of the project should be rejected. Respondent no.4 has further stated that the permission granted to the respondent no.4 by the Government of India as well as the State Government are conditional permissions. There are conditions in granting said permission and those conditions which are put in the said permission are put with a view to see that there is proper protection of marine life as well as environment and ecology. Thus the respondent no.4 contends that present petition should be rejected.

6. There is no dispute of the fact that the permission dated August 8,1997 is granted under section 29 of the said Act. Mr. M.C.Bhatt, learned counsel for the petitioner drew our attention to the provisions of sections 27 and 28 of the said Act. Section 27 speaks about the restriction on entry in sanctuary and section

28 makes provisions for the grant of permit for making entry in the sanctuary. Mr. Bhatt vehemently urged before us that if the provisions of these two sections are considered then it would be quite that entry in the forest area should not be granted. He then referred to section 29 of the said Act and according to him, if the provisions of the said section 29 are read carefully, then it would be quite clear that the sanction granted by the respondent no.2 on August 8, 1997 is without the approval of the State Government as required by section 29 and consequently said granting of permission is illegal and invalid.. In order to appreciate and consider the said contention of Mr. Bhatt, it is necessary to consider the provisions of section.29 of the said Act. Section 29 runs as under:

" 29. Destruction, etc. in a sanctuary prohibited without a permit. No person shall destroy, exploit or remove any wildlife from a sanctuary or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wildlife Warden and no such permit shall be granted unless the State Government being satisfied that such destruction, exploitation or removal of wildlife from the sanctuary is necessary for the improvement and better management of wildlife therein authorities the issue of such permit."

(emphasis supplied)

If the above provisions of section 29 are considered, then it would be quite clear that under the said section everybody is prevented

(1) from destroying , exploiting or removing any wildlife from a sanctuary;

(2) from destroying or damaging the habitat of any wild animal;

[A (3) depriving any wild animal of its habitat within such sanctuary except under and in accordance with a permit granted by the Chief Wildlife Warden;

Then it further lays down that in case of the distruction, exploitation or removal of wild life from

sanctuary, the permission could not be granted unless State Government is satisfied that it is for the improvement and better management. If this later part of this section 29 is considered, then it would be quite clear that this later part of section 29 is only referring to the restriction of the State Government being satisfied only in case of destruction, exploitation or removal of wildlife.. Therefore, if the section 29 is considered as a whole, then it would be quite clear that the destruction or damage to the habitat or any wild animal being deprived of its habitat could be done only with the permission granted by the Chief Wildlife Warden. Section 29 does not say that for granting such permission, the Chief Wildlife Warden is required to obtain a permission from the State Government which is to be satisfied that the same is necessary for better management and improvement of wildlife. That condition is applicable only in case if there is destruction or exploitation or removal of wildlife.

7. Admittedly permission is granted to respondent no.4 for the purpose of laying pipeline for carrying its crude oil to its refinery project for the purpose of its refining and making many products out of it. Now, when the pipeline is to be put in, naturally the same will cause damage to the habitat of wild animal and there is also likelihood of deprivation of wild animal of its habitat. Consequently before laying any pipeline, a permission under section 29 must be obtained by the person who intends to lay the pipeline through the forest area. Therefore, if the provisions of section 29 are read carefully, then they do not permit us to accept the contention of Mr. Bhatt that respondent no.2 has no jurisdiction to grant the permission in question.

8. The copy of the permission granted by the respondent no.2 is produced by the petitioner at page 14 and the respondent no. 4 has also produced a copy of the same at page 75 and if we read the said permission minutely, then it would be quite clear that said permission is granted on certain conditions. The permission is also making a reference to the earlier office orders as well as the granting of permission by Government of India. Those conditions are running as under.

"1. The RPL shall strictly carry out the work  
as per the prescribed conditions imposed and/or  
the conditions that may be imposed considering  
the ecological sensitivity of Gulf of Kutch, to

ensure the protection of corals and other marine flora and fauna during construction as well as operational phases of the project and shall make necessary contributions in any efforts for cumulative impact assessment studies and for combined environmental management plan for Gulf of Kutch in view of the State Government letter No. FCA 1097-1153-K dated 27-06-97.

2. The RPL shall strictly observe compliance of all the conditions and environmental safeguards as imposed by the Government of India vide its office memorandum No.J-11011.25/94-IAII(I) dated 15-09-95 conveying environmental clearance.
3. The RPL shall strictly observe all the conditions in Annexure XVII prescribed under the proposal seeking diversion of forest land of marine facilities for the company by this office letter LND/29/A/51/97/3577-79, dated 31-03-97.
4. The RPL shall also observe such conditions as may be prescribed in future by the Chief Conservator of Forests(Wildlife), Gujarat State, Gandhinagar or by the Government of Gujarat in the best interest of preservation and protection of flora and fauna of the area.
5. Different conditions of GoI imposed by its letter dated 31-07-97 regarding effective monitoring and development of MNPS while working by user agency in its, should be observed strictly,
6. The Project proponents should transfer the cost of afforestation on degraded mangrove forest land equivalence to the area of Sanctuary and National Park being permitted to work with to safeguard flora and fauna of the Marine National Park. "

Now along with these conditions it is also necessary to consider the clearance granted by Government of India in Environment Department by its order dated September 15,1995. Said order is produced at pages 66 to 72. Now by this letter, the respondent no.4 was given clearance on certain conditions. Out of those conditions, the following conditions which are at page 69 are of much importance. They run as under:

"...In addition to the above conditions stipulated for the entire refinery complex, the following specific conditions for the associated, infrastructural facilities should also be implemented.

A. SPM AND SUB-SEA PIPELINE.

1. The tank frame should be designed in such a way that the residual flow including floor washing do not percolate the marine areas including the nearby salt pans. Location of SPM/SBM and submarine pipeline should be selected in consultation with NIO, State Pollution Control Board and Government of Gujarat(National Marine Park Authority) in such a way that corals and mangroves are not affected.

Necessary approvals from the Chief Wild Life Warden Government of Gujarat should be obtained prior to laying of SDM/COT/Sub-Marine/onshore pipeline and necessary details in this regard should be submitted to the Ministry."

Now if the above conditions are considered, then it would be quite clear that by putting the said conditions , necessary steps are taken to protect the environment, marine life as well as ecology. Government of India has also written a letter on July 31,1997 to the Government of Gujarat. Said letter is at pages nos. 73 and 74 and the relevant portion of the said letter is running as under:

"After careful consideration of the proposal of the State Government, the undersigned on behalf of the Central Government hereby agrees in principle for diversion of 1.9866 ha. of forest land and permission for right of way for Marine facilities like laying pipelines and approach facilities for RPL refinery in MNP and sanctuary in Jamnagar District subject to the following conditions.:

1. The legal status of the forest land shall remain unchanged.
2. Transfer and mutation of equivalent non forest land should be done in favour of State Forest Department.



3. This non forest land shall be declared as protected forest.
4. The cost of compensatory afforestation shall be deposited in advance with the Forest Department by the user aged at the rate fixed by the Forest Department as per the existing norms.
5. Work in sancturary/National Park will be taken with the approval of CWLW of the State and subject to such condition as may be laid down by him to safeguard flora and fauna of Marine national Park and sanctuary, Jamnagar.
6. A monitoring committee under the leadership of Marine National ) having representatives from Ministry of Environment & Forests, Government of India, National Institute of Oceanography and project proposition will be constituted to monitor the conditions imposed by Ministry of Environment and Forests and Chief Wild Life Warden of the State. For effective monitoring and development of MNP this committee should have adequate exposure of latent knowhow on the subject available in the country and abroad.

After receipt of the compliance report on the fulfillment the conditions no. 2,4 and 5 from the State Government formal approval will be issued in this regard under section 2 of the Forest(Conservation) Act 1980.

This order for diversion of forest land to user agency could not be issued by the State Government till formal approval order is issued by this office. "

9. If the conditions which are put by the Central Government in giving clearance under the Memorandum dated September 15,1995 as well as permitting of diversion of 1.9866 ha.of forest land by the letter dated July 31,1997 are read together along with the conditions put by respondent no.2 in his office order dated August 8,1998, it would be quite clear the Central Government as well as the State Government have taken necessary precaution in order to see that there is proper protection for marine life economy as well as environment. If these conditions are taken into consideration, then it would be quite clear that when the respondent no.2 has granted permission on August 8,1997, he has passed the said order with a view to see that there is proper management of

wildlife as well as their improvement.

10. Mr. Bhatt very vehemently urged before us that the respondent no.2 had not at all taken into consideration the fact that there was no improvement or better management of wildlife and consequently the order in question would be illegal and invalid. But in view of the material on record, we are unable to agree with his submission. In our opinion, when the conditions which the Central Government has put while granting clearance under the Environment Act on September 15,1995 as well as the conditions in the letter of July 31,1997 are read together, then it would be quite clear that the Central Government had taken necessary precaution to see that there is protection and betterment of wildlife and ecology and the respondent no.2 has also granted permission in question to respondent no.4 with conditions which would show that the order in question is passed bearing in mind the provisions of the said Act. The Chief Wildlife Warden has filed his affidavit and the said affidavit is at page 162. In the said affidavit in paras 4 and 5 he has stated as under:

" I say that a pipeline which is being laid by Reliance Petroleum Ltd. through Marine National Park and Marine Sanctuary is most degraded area of the National park and the sanctuary which is presently devoid of any vegetation and is occupied by very little marine life.

I say that Chief Wildlife Warden while permitting the Reliance Petroleum Ltd. for laying the pipeline had laid down certain conditions which ultimately would improve the habitat of the Sanctuary and National Park by planting mangroves and also by providing protection to the Wild Life therein. So there are absolutely nothing wrong in permitting Reliance Petroleum Ltd. for laying pipeline through the Sanctuary and national Park within the conditions that it ultimately would improve the habitat of both Sanctuary as well as National Park. "

11. If the above statements made by the Chief Wildlife Warden in his affidavit dated February 11,1998 are taken into consideration, then it would be quite clear that by permitting respondent no.4 to make use of some portion of the land from the forest area and/or natural park, it could not be said that there is any likelihood of damage or destruction of the marine life,

wildlife or ecology or environment.

12. Respondent no.4 has stated in page no.4 of additional affidavit that SBM is to be located at the water depth of 32 meters beyond the boundary of the sanctuary and Marine National Park and entire pipe line is to be certified and notified by Lloyds Register Shipping, London to ensure its safety. Then the underbody houses of the SBM have double carcass (double walled instead of single carcass). Then the pipeline in the intertidal area will be placed on a trestle ( a bridge like construction) and the same will be above water level and will not interfere with the movements of water or any marine life. It is further stated that they have constantly consulted NIO and NEERI at every stage of implementing the project. It is further stated that the location of refinery and the pipeline connecting the SBM has been selected after giving paramount consideration that it would not affect adversely ecology and environment. There is no material to reject the above claims of the respondent no.4 RPL.

13. Admittedly the present petitioner was not a party to the earlier petitions filed in the Apex Court as well as this High Court. But merely because the petitioner was not a party to those petitions which were filed for objecting the refinery project of the respondent no.4-RPL, it could not be said that the same has no bearing on the present proceedings. Those proceedings were also filed by the petitioners in the Public Interest for the protection of environment and ecology. Thus all these proceedings were filed for the same "interest and claim" Therefore, when the subject matter of the earlier proceedings and the present proceedings is one and when the petitioners in both proceedings were having the same status, then the earlier decisions will create the general principle of constructive resjudicata. In the writ petition No. 316 of 1994, the Apex Court has disposed of the petition by passing the following order:

"Mr. Altaf Ahmed, the learned Additional  
Solicitor General appearing for  
respondent nos 1,2 and 3 very fairly  
stated that the respondents have taken  
full notice of all the grievances pointed  
out by the petitioner in this writ  
petition. He further states that the  
respondents are conscious of the  
environmental protection and would

preserve the environment in the process of setting up the refinery. The petition is disposed of."

Therefore, it is incumbent upon the petitioner to show that while granting sanction and permission to the refinery in question, the respondent nos 1 to 3 have not fulfilled the statement made before the Apex Court by giving specific data. But that is not done. Hence the petitioner's petition deserves to be rejected for that failure.

14. Learned counsel for the petitioner has cited before ius the following cases:

1. Pradeep Krishen vs. Union of India & ors.  
1996(8) SCC 599(2) (2) Tarun Bharat Sangh, Alwar vs. Union of India & ors. 1992 Supp.(2)SCC 448 and Consumer Education & Research Society "Suraksha Sankool" vs. Union of India & ors. 1995(2) GCD 325.

If the facts of these cases are considered then it would be quite clear that all these cases are not applicable to the facts before us. Even in the first case of 1996(8) SCC 559, the permission granted by the State of M.P. permitting the villagers and persons residing the adjoining forest to pluck tendu leaves was not cancelled by the Apex Court. The Apex Court has directed the State Government to take necessary action to see that there is no shrinkage of the forest. We have already quoted above the conditions put by the State Government as well as the Central, Government while granting permission in question and in our opinion those conditions are taking necessary care for the protection marine life, wildlife and environment and therefore, in the circumstances, there is no reason for us to interfere with the order in question by exercising discretionary powers under article 226 of the Constitution of India. The Apex Court in the case of Indian Council for Enviro-Legal Action vs. Union of India & ors.. 1996(4) JT SC 263 in para 31 has observed as under:

"While examining the validity of the 1994 Notification, it has to be borne in mind that normally, such Notification are issued after a detailed study and examination of all relevant issues. In matters relating to environment, it may not always be possible to lay down right or uniform standards for the entire country. While

issue the notifications like the present the Government has to balance various interests including economic, ecological social and cultural. While economic development should not be allowed to take place at the cost of ecology or by causing wide spread environment destruction and violation, at the same time the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice-versa but there should be development while taking due care and ensuring the protection of environment. This is sought to be achieved by issuing notifications like the present, relating to developmental activities being carried out in such a way so that unnecessary environmental degradation does not take place. In other words, in order to prevent ecological imbalance and degradation that developmental activity is sought to be regulated."

In our humble opinion the above observation aptly apply to the proceedings before us. It has been mentioned by the respondent no.4. in his affidavit, that by the project in question there will be savings of foreign exchange of 300 million U.S. dollars per year. Said project will also generate employment opportunities and the project in question is for National interest and particularly in the interest of State of Gujarat. Therefore, taking into consideration this aspect and the fact that both the Central Government and State Government have taken necessary precaution in seeing that neither the ecology nor environment is damaged while implementing the project in question, we are, of the opinion that no interference is called for by this court by exercising the powers under article 226 of the Constitution of India. We therefore, hold that present petition deserves to be rejected. We accordingly reject the same with no order as to costs.

15. Learned counsel for the petitioner wants us to restrain the respondent no.4 to proceed further with the project in question as he intends to go before the Apex Court against our order. We have rejected the petition on merits by dealing with all the points raised by the petitioner and we have considered in details the pleadings of the parties. In our opinion, to allow the prayer of the present petitioner would be allowing

travesty of justice. Such a huge project involving corers of rupees has already been delayed on account of filing of the present petition as well as earlier petitions and we do not find any reason to further stall the same by allowing the present prayer. We therefore, reject the same.

(S.D.Dave.J)

(S.D.Pandit.J)